

Calendar No. 353

106TH CONGRESS
1ST SESSION

S. 385

[Report No. 106-202]

A BILL

To amend the Occupational Safety and Health Act
of 1970 to further improve the safety and health
of working environments, and for other purposes.

OCTOBER 28, 1999

Reported with amendments

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 1999

Mr. ENZI (for himself, Mr. JEFFORDS, Mr. HUTCHINSON, Mr. HAGEL, Mr. SESSIONS, Mr. FRIST, Mr. BROWNBACK, Mr. CRAPO, and Mr. BUNNING) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

OCTOBER 28, 1999

Reported by Mr. JEFFORDS, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; REFERENCE.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Safety Advancement for Employees Act of 1999” or the
4 “SAFE Act”.

5 (b) REFERENCE.—Whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or other provi-
9 sion of the Occupational Safety and Health Act of 1970
10 (29 U.S.C. 651 et seq.).

11 **SEC. 2. PURPOSE.**

12 Section 2(b) of the Act (29 U.S.C. 651(b)) is
13 amended—

14 (1) in paragraph (13), by striking the period
15 and inserting “; and”; and

16 (2) by adding at the end the following:

17 “(14) by increasing the joint cooperation of em-
18 ployers, employees, and the Secretary of Labor in
19 the effort to ensure safe and healthful working con-
20 ditions for employees.”.

21 **SEC. 3. THIRD PARTY CONSULTATION SERVICES PROGRAM.**

22 (a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is
23 amended by inserting after section 8 the following:

24 **“SEC. 8A. THIRD PARTY CONSULTATION SERVICES PRO-**
25 **GRAM.**

26 ~~“(a) PURPOSE.—Recognizing that—~~

1 ~~“(1) employee safety is of paramount concern;~~

2 ~~“(2) employers are overburdened by regulations~~

3 ~~and are unable to read through, understand and ef-~~

4 ~~fectively comply with the voluminous requirements of~~

5 ~~this Act; and~~

6 ~~“(3) the Secretary is unable to individually sat-~~

7 ~~isfy the compliance needs of each employer and em-~~

8 ~~ployee within its jurisdiction;~~

9 it is

10 ~~“(a) PURPOSE.—~~*It is* the purpose of this section to

11 encourage employers to conduct voluntary safety and

12 health audits using the expertise of qualified safety and

13 health consultants and to proactively seek individualized

14 solutions to workplace safety and health concerns.

15 ~~“(b) ESTABLISHMENT OF PROGRAM.—~~

16 ~~“(1) IN GENERAL.—~~Not later than 18 months

17 after the date of enactment of this section, the Sec-

18 retary, in consultation with the advisory committee

19 established under section 7(d), shall establish and

20 implement, by regulation, a program that qualifies

21 individuals to provide consultation services to em-

22 ployers to assist employers in the identification and

23 correction of safety and health hazards in the work-

24 places of employers.

1 “(2) ELIGIBILITY.—The following individuals
2 shall be eligible to be qualified under the program
3 under paragraph (1) as certified safety and health
4 consultants:

5 “(A) An individual who is licensed by a
6 State authority as a physician, industrial hy-
7 gienist, professional engineer, safety engineer,
8 safety professional, or ~~occupational~~ *registered*
9 nurse.

10 “(B) An individual who has been employed
11 as an inspector for a State plan State or as a
12 Federal occupational safety and health inspec-
13 tor for not less than a 5-year period.

14 “(C) An individual who is qualified in an
15 occupational health or safety field by an organi-
16 zation whose program has been accredited by a
17 nationally recognized private accreditation orga-
18 nization or by the Secretary.

19 “(D) *An individual who has not less than*
20 *10 years expertise in workplace safety and*
21 *health.*

22 “~~(D)~~ (E) Other individuals determined to
23 be qualified by the Secretary.

24 “(3) GEOGRAPHICAL SCOPE OF CONSULTATION
25 SERVICES.—A consultant qualified under the pro-

1 gram under paragraph (1) may provide consultation
2 services in any State.

3 “(4) LIMITATION BASED ON EXPERTISE.—A
4 consultant qualified under the program under para-
5 graph (1) may only provide consultation services to
6 an employer with respect to a worksite if the work
7 performed at that worksite coincides with the par-
8 ticular expertise of the individual.

9 “(c) SAFETY AND HEALTH REGISTRY.—The Sec-
10 retary shall develop and maintain a registry that includes
11 all consultants that are qualified under the program under
12 subsection (b)(1) to provide the consultation services de-
13 scribed in subsection (b) and shall publish and make such
14 registry readily available to the general public.

15 “(d) DISCIPLINARY ACTIONS.—The Secretary may
16 revoke the status of a consultant qualified under sub-
17 section (b), or the participation of an employer under sub-
18 section (b) in the third party consultation program, if the
19 Secretary determines that the consultant or employer—

20 “(1) has failed to meet the requirements of the
21 program; or

22 “(2) has committed malfeasance, gross neg-
23 ligence, collusion or fraud in connection with any
24 consultation services provided by the qualified con-
25 sultant.

1 “(e) PROGRAM REQUIREMENTS.—

2 “(1) FULL SERVICE CONSULTATION.—The con-
3 sultation services described in subsection (b), and
4 provided by a consultant qualified under the pro-
5 gram under subsection (b)(1), shall include an eval-
6 uation of the workplace of an employer to determine
7 if the employer is in compliance with the require-
8 ments of this Act, including any regulations promul-
9 gated pursuant to this Act. Employers electing to
10 participate in such program shall contract with a
11 consultant qualified under subsection (b)(2) to per-
12 form a full service visit and consultation covering
13 the employer’s establishment, including a complete
14 safety and health program review. Following the
15 guidance as specified in this section, the consultant
16 shall discuss with the employer the elements of an
17 effective program.

18 “(2) CONSULTATION REPORT.—

19 “(A) IN GENERAL.—After a consultant
20 conducts a comprehensive survey of an em-
21 ployer under a program under this section, the
22 consultant shall prepare and submit to the em-
23 ployer a written report that includes an action
24 plan identifying any violations of this Act, and
25 any appropriate corrective measures to address

1 the violations that are identified using an effective
2 safety and health program.

3 “(B) ELEMENTS.—A consultation report
4 shall contain each of the following elements.

5 “(i) ACTION PLAN.—

6 “(I) IN GENERAL.—An action
7 plan under subparagraph (A) shall be
8 developed in consultation with the em-
9 ployer as part of the initial com-
10 prehensive survey. The consultant and
11 the employer shall jointly use the on-
12 site time in the initial visit to the em-
13 ployer’s place of business to agree on
14 the terms of the action plan and the
15 time frames for achieving specific
16 items.

17 “(II) REQUIREMENTS.—The ac-
18 tion plan shall outline the specific
19 steps that must be accomplished by
20 the employer prior to receiving a cer-
21 tificate of compliance. The action plan
22 shall address in detail—

23 “(aa) the employer’s correc-
24 tion of all identified safety and

1 health hazards, with applicable
2 time frames;

3 “(bb) the steps necessary for
4 the employer to implement an ef-
5 fective safety and health pro-
6 gram, with applicable time
7 frames; and

8 “(cc) a statement of the em-
9 ployer’s commitment to work
10 with the consultation project to
11 achieve a certificate of compli-
12 ance.

13 “(ii) SAFETY AND HEALTH PRO-
14 GRAM.—An employer electing to partici-
15 pate in a program under this section shall
16 establish a safety and health program to
17 manage workplace safety and health to re-
18 duce injuries, illnesses and fatalities that
19 complies with paragraph (3). Such safety
20 and health program shall be appropriate to
21 the conditions of the workplace involved.

22 “(3) REQUIREMENTS FOR SAFETY AND HEALTH
23 PROGRAM.—

24 “(A) WRITTEN PROGRAM.—An employer
25 electing to participate shall maintain a written

1 safety and health program that contains poli-
2 cies, procedures, and practices to recognize and
3 protect their employees from occupational safe-
4 ty and health hazards. Such procedures shall
5 include provisions for the identification, evalua-
6 tion and prevention or control of workplace haz-
7 ards.

8 “(B) MAJOR ELEMENTS.—A safety and
9 health program shall include the following ele-
10 ments, and may include other elements as nec-
11 essary to the specific worksite involved and as
12 determined appropriate by the qualified consult-
13 ant and employer:

14 “(i) EMPLOYER COMMITMENT AND
15 EMPLOYEE INVOLVEMENT.—

16 “(I) IN GENERAL.—The existence
17 of both management leadership and
18 employee participation must be dem-
19 onstrated in accordance with sub-
20 clauses (II) and (III).

21 “(II) MANAGEMENT LEADER-
22 SHIP.—To make a demonstration of
23 management leadership under this
24 subclause, the employer shall—

1 “(aa) set a clear worksite
2 safety and health policy that em-
3 ployees can fully understand;

4 “(bb) set and communicate
5 clear goals and objectives with
6 the involvement of employees;

7 “(cc) provide essential safety
8 and health leadership in tangible
9 and recognizable ways;

10 “(dd) set positive safety and
11 health examples; and

12 “(ee) perform comprehensive
13 reviews of safety and health pro-
14 grams for quality assurance
15 using a process which promotes
16 continuous correction.

17 “(III) EMPLOYEE PARTICIPA-
18 TION.—With respect to employee par-
19 ticipation, the employer shall dem-
20 onstrate a commitment to working to
21 develop a comprehensive, written and
22 operational safety and health program
23 that involves employees in significant
24 ways that affect safety and health. In

1 making such a demonstration, the em-
2 ployer shall—

3 “(aa) provide for employee
4 participation in actively identi-
5 fying and resolving safety and
6 health issues in tangible ways
7 that employees can clearly under-
8 stand;

9 “(bb) assign safety and
10 health responsibilities in such a
11 way that employees can under-
12 stand clearly what is expected of
13 them;

14 “(cc) provide employees with
15 the necessary authority and re-
16 sources to meet their safety and
17 health responsibilities; and

18 “(dd) provide that safety
19 and health performance for man-
20 agers, supervisors and employees
21 be measured in tangible ways.

22 “(ii) WORKPLACE ANALYSIS.—The
23 employer, in consultation with the consult-
24 ant, shall systematically identify and assess
25 hazards in the following ways:

1 “(I) Conduct corrective action
2 and regular expert surveys to update
3 hazard inventories.

4 “(II) Have competent personnel
5 review every planned or new facility,
6 process material, or equipment.

7 “(III) Train all employees and
8 supervisors, conduct routine joint in-
9 spections, and correct items identified.

10 “(IV) Establish a way for em-
11 ployees to report hazards and provide
12 prompt responses to such reports.

13 “(V) Investigate worksite acci-
14 dents and near accidents.

15 “(VI) Provide employees with the
16 necessary information regarding inci-
17 dent trends, causes and means of pre-
18 vention.

19 “(iii) HAZARD PREVENTION.—The
20 employer, in consultation with the consult-
21 ant, shall—

22 “(I) engage in timely hazard con-
23 trol, working to ensure that hazard
24 controls are fully in place and commu-
25 nicated to employees, with emphasis

1 on engineering controls and enforcing
2 safe work procedures;

3 “(II) maintain equipment using
4 operators who are trained to recognize
5 maintenance needs and perform or di-
6 rect timely maintenance;

7 “(III) provide training on emer-
8 gency planning and preparation,
9 working to ensure that all personnel
10 know immediately how to respond as
11 a result of effective planning, training,
12 and drills;

13 “(IV) equip facilities for emer-
14 gencies with all systems and equip-
15 ment in place and regularly tested so
16 that all employees know how to com-
17 municate during emergencies and how
18 to use equipment; and

19 “(V) provide for emergency med-
20 ical situations using employees who
21 are fully trained in emergency medi-
22 cine.

23 “(iv) SAFETY AND HEALTH TRAIN-
24 ING.—The employer, in consultation with
25 the consultant, shall—

1 “(I) involve employees in hazard
2 assessment, development and delivery
3 of training;

4 “(II) actively involve supervisors
5 in worksite analysis by empowering
6 them to ensure physical protections,
7 reinforce training, enforce discipline,
8 and explain work procedures; and

9 “(III) provide training in safety
10 and health management to managers.

11 “(4) REINSPECTION.—At a time agreed to by
12 the employer and the consultant, the consultant may
13 reinspect the workplace of the employer to verify
14 that the required elements in the consultation report
15 have been satisfied. If such requirements have been
16 satisfied, the employer shall be provided with a cer-
17 tificate of compliance for that workplace by the
18 qualified consultant.

19 “(f) EXEMPTION FROM CIVIL PENALTIES FOR COM-
20 PLIANCE.—

21 “(1) IN GENERAL.—If an employer enters into
22 a contract with an individual qualified under the
23 program under this section, to provide consultation
24 services described in subsection (b), and receives a
25 certificate of compliance under subsection (e)(4), the

1 employer shall be exempt from the assessment of
2 any civil penalty under section 17 for a period of 1
3 year after the date on which the employer receives
4 such certificate.

5 “(2) EXCEPTIONS.—An employer shall not be
6 exempt under paragraph (1)—

7 “(A) if the employer has not made a good
8 faith effort to remain in compliance as required
9 under the certificate of compliance; or

10 “(B) to the extent that there has been a
11 fundamental change in the hazards of the work-
12 place.

13 “(g) RIGHT TO INSPECT.—Nothing in this section
14 shall be construed to affect the rights of the Secretary to
15 inspect and investigate worksites covered by a certificate
16 of compliance.

17 “(h) RENEWAL REQUIREMENTS.—An employer that
18 is granted a certificate of compliance under this section
19 may receive a 1 year renewal of the certificate if the fol-
20 lowing elements are satisfied:

21 “(1) A qualified consultant shall conduct a com-
22 plete onsite safety and health survey to ensure that
23 the safety and health program has been effectively
24 maintained or improved, workplace hazards are

1 under control, and elements of the safety and health
2 program are operating effectively.

3 “(2) The consultant, in an onsite visit by the
4 consultant, has determined that the program re-
5 quirements have been complied with and the health
6 and safety program has been operating effectively.

7 “(i) NON-FIXED WORKSITES.—With respect to em-
8 ployer worksites that do not have a fixed location, a certifi-
9 cate of compliance shall only apply to that worksite which
10 satisfies the criteria under this section and such certificate
11 shall not be portable to any other worksite. This section
12 shall not apply to service establishments that utilize essen-
13 tially the same work equipment at each non-fixed work-
14 site.”.

15 **SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COM-**
16 **MITTEE.**

17 Section 7 of the Act (29 U.S.C. 656) is amended by
18 adding at the end the following:

19 “(d)(1) Not later than 6 months after the date of
20 enactment of this subsection, the Secretary shall establish
21 an advisory committee (pursuant to the Federal Advisory
22 Committee Act (5 U.S.C. App.)) to carry out the duties
23 described in paragraph (3).

24 “(2) The advisory committee shall be composed of—

25 “(A) 3 members who are employees;

1 “(B) 3 members who are employers;

2 “(C) 2 members who are members of the gen-
3 eral public; and

4 “(D) 1 member who is a State official from a
5 State plan State.

6 Each member of the advisory committee shall have exper-
7 tise in workplace safety and health as demonstrated by
8 the educational background of the member.

9 “(3) The advisory committee shall advise and make
10 recommendations to the Secretary with respect to the es-
11 tablishment and implementation of a consultation services
12 program under section 8A.”.

13 **SEC. 5. CONTINUING EDUCATION AND PROFESSIONAL CER-**
14 **TIFICATION FOR CERTAIN OCCUPATIONAL**
15 **SAFETY AND HEALTH ADMINISTRATION PER-**
16 **SONNEL.**

17 Section 8 of the Act (29 U.S.C. 657) is amended by
18 adding at the end the following:

19 “~~(h)~~ (i) Any Federal employee responsible for enforce-
20 ing this Act shall, not later than 2 years after the date
21 of enactment of this subsection or 2 years after the initial
22 employment of the employee involved, meet the eligibility
23 requirements prescribed under subsection (b)(2) of section
24 8A.

1 “(i) (j) The Secretary shall ensure that any Federal
 2 employee responsible for enforcing this Act who carries
 3 out inspections or investigations under this section, receive
 4 professional education and training at least every 5 years
 5 as prescribed by the Secretary.”.

6 **SEC. 6. EXPANDED INSPECTION METHODS.**

7 (a) PURPOSE.—It is the purpose of this section to
 8 empower the Secretary of Labor to achieve increased em-
 9 ployer compliance by using, at the Secretary’s discretion,
 10 more efficient and effective means for conducting inspec-
 11 tions.

12 (b) GENERAL.—Section 8(f) of the Act (29 U.S.C.
 13 657(f) is amended—

14 (1) by adding at the end the following:

15 “(3) The Secretary or an authorized representative
 16 of the Secretary may, as a method of investigating an al-
 17 leged violation or danger under this subsection, attempt,
 18 if feasible, to contact an employer by telephone, facsimile,
 19 or other appropriate methods to determine whether—

20 “(A) the employer has taken corrective actions
 21 with respect to the alleged violation or danger; or

22 “(B) there are reasonable grounds to believe
 23 that a hazard exists.

24 “(4) The Secretary is not required to conduct an in-
 25 spection under this subsection if the Secretary determines

1 that a request for an inspection was made for reasons
2 other than the safety and health of the employees of an
3 employer or that the employees of an employer are not
4 at risk.”.

5 **SEC. 7. WORKSITE-SPECIFIC COMPLIANCE METHODS.**

6 Section 9 of the Act (29 U.S.C. 658) is amended by
7 adding at the end the following:

8 “(d) A citation issued under subsection (a) to an em-
9 ployer who violates section 5, any standard, rule, or order
10 promulgated pursuant to section 6, or any other regulation
11 promulgated under this Act shall be vacated if such em-
12 ployer demonstrates that the employees of such employer
13 were protected by alternative methods that are equally or
14 more protective of the safety and health of the employees
15 than the methods required by such standard, rule, order,
16 or regulation in the factual circumstances underlying the
17 citation.

18 “(e) Subsection (d) shall not be construed to elimi-
19 nate or modify other defenses that may exist to any cita-
20 tion.”.

21 **SEC. 8. TECHNICAL ASSISTANCE PROGRAM.**

22 (a) IN GENERAL.—Section 21(c) of the Act (29
23 U.S.C. 670(c)) is amended—

24 (1) by striking “(c) The” and inserting “(c)(1)
25 The”;

1 (2) by striking “(1) provide” and inserting “(A)
2 provide”;

3 (3) by striking “(2) consult” and inserting “(B)
4 consult”; and

5 (4) by adding at the end the following:

6 “(2)(A) The Secretary shall, through the authority
7 granted under section 7(c) and paragraph (1), enter into
8 cooperative agreements with States for the provision of
9 consultation services by such States to employers con-
10 cerning the provision of safe and healthful working condi-
11 tions.

12 “(B)(i) Except as provided in clause (ii), the Sec-
13 retary shall reimburse a State that enters into a coopera-
14 tive agreement under subparagraph (A) in an amount that
15 equals 90 percent of the costs incurred by the State for
16 the provision of consultation services under such agree-
17 ment.

18 “(ii) A State shall be reimbursed by the Secretary
19 for 90 percent of the costs incurred by the State for the
20 provision of—

21 “(I) training approved by the Secretary for
22 State personnel operating under a cooperative agree-
23 ment; and

24 “(II) specified out-of-State travel expenses in-
25 curred by such personnel.

1 “(iii) A reimbursement paid to a State under this
2 subparagraph shall be limited to costs incurred by such
3 State for the provision of consultation services under this
4 paragraph and the costs described in clause (ii).”.

5 (b) PILOT PROGRAM.—Section 21 of the Act (29
6 U.S.C. 670) is amended by adding at the end the fol-
7 lowing:

8 “~~(d)~~ (e)(1) Not later than 90 days after the date of
9 enactment of this subsection, the Secretary shall establish
10 and carry out a pilot program in 3 States to provide expe-
11 dited consultation services, with respect to the provision
12 of safe and healthful working conditions, to employers that
13 are small businesses (as the term is defined by the Admin-
14 istrator of the Small Business Administration). The Sec-
15 retary shall carry out the program for a period of not to
16 exceed 2 years.

17 “(2) The Secretary shall provide consultation services
18 under paragraph (1) not later than 4 weeks after the date
19 on which the Secretary receives a request from an em-
20 ployer.

21 “(3) The Secretary may impose a nominal fee to an
22 employer requesting consultation services under para-
23 graph (1). The fee shall be in an amount determined by
24 the Secretary. Employers paying a fee shall receive pri-
25 ority consultation services by the Secretary.

1 “(4) In lieu of issuing a citation under section 9 to
2 an employer for a violation found by the Secretary during
3 a consultation under paragraph (1), the Secretary shall
4 permit the employer to carry out corrective measures to
5 correct the conditions causing the violation. The Secretary
6 shall conduct not more than 2 visits to the workplace of
7 the employer to determine if the employer has carried out
8 the corrective measures. The Secretary shall issue a cita-
9 tion as prescribed under section 5 if, after such visits, the
10 employer has failed to carry out the corrective measures.

11 “(5) Not later than 90 days after the termination of
12 the program under paragraph (1), the Secretary shall pre-
13 pare and submit a report to the appropriate committees
14 of Congress that contains an evaluation of the implemen-
15 tation of the pilot program.”.

16 **SEC. 9. VOLUNTARY PROTECTION PROGRAMS.**

17 (a) COOPERATIVE AGREEMENTS.—The Secretary of
18 Labor shall establish cooperative agreements with employ-
19 ers to encourage the establishment of comprehensive safe-
20 ty and health management systems that include—

- 21 (1) requirements for systematic assessment of
22 hazards;
23 (2) comprehensive hazard prevention, mitiga-
24 tion, and control programs;

1 (3) active and meaningful management and em-
2 ployee participation in the voluntary program de-
3 scribed in subsection (b); and

4 (4) employee safety and health training.

5 (b) VOLUNTARY PROTECTION PROGRAM.—

6 (1) IN GENERAL.—The Secretary of Labor shall
7 establish and carry out a voluntary protection pro-
8 gram (consistent with subsection (a)) to encourage
9 and recognize the achievement of excellence in both
10 the technical and managerial protection of employees
11 from occupational hazards.

12 (2) PROGRAM REQUIREMENT.—The voluntary
13 protection program shall include the following:

14 (A) APPLICATION.—Employers who volun-
15 teer under the program shall be required to
16 submit an application to the Secretary of Labor
17 demonstrating that the worksite with respect to
18 which the application is made meets such re-
19 quirements as the Secretary of Labor may re-
20 quire for participation in the program.

21 (B) ONSITE EVALUATIONS.—There shall
22 be onsite evaluations by representatives of the
23 Secretary of Labor to ensure a high level of
24 protection of employees. The onsite visits shall
25 not result in enforcement of citations under the

1 Occupational Safety and Health Act of 1970
2 (29 U.S.C. 651 et seq.).

3 (C) INFORMATION.—Employers who are
4 approved by the Secretary of Labor for partici-
5 pation in the program shall assure the Sec-
6 retary of Labor that information about the
7 safety and health program of the employers
8 shall be made readily available to the Secretary
9 of Labor to share with employees.

10 (D) REEVALUATIONS.—Periodic reevalua-
11 tions by the Secretary of Labor of the employ-
12 ers shall be required for continued participation
13 in the program.

14 (3) EXEMPTIONS.—A site with respect to which
15 a program has been approved shall, during partici-
16 pation in the program be exempt from inspections or
17 investigations and certain paperwork requirements
18 to be determined by the Secretary of Labor, except
19 that this paragraph shall not apply to inspections or
20 investigations arising from employee complaints, fa-
21 talities, catastrophes, or significant toxic releases.

22 (4) INCREASED SMALL BUSINESS PARTICIPA-
23 TION.—The Secretary of Labor shall establish and
24 implement, by regulation, a program to increase par-
25 ticipation by small businesses (as the term is defined

1 by the Administrator of the Small Business Admin-
 2 istration) in the voluntary protection program
 3 through outreach and assistance initiatives and de-
 4 veloping program requirements that address the
 5 needs of small businesses.

6 **SEC. 10. PREVENTION OF ALCOHOL AND SUBSTANCE**
 7 **ABUSE.**

8 The Act (29 U.S.C. 651 et seq.) is amended by add-
 9 ing at the end the following:

10 **“SEC. 35. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

11 “(a) PROGRAM PURPOSE.—In order to secure a safe
 12 workplace, employers may establish and carry out an alco-
 13 hol and substance abuse testing program in accordance
 14 with subsection (b).

15 “(b) FEDERAL GUIDELINES.—

16 “(1) REQUIREMENTS.—An alcohol and sub-
 17 stance abuse testing program described in subsection
 18 (a) shall meet the following requirements:

19 “(A) SUBSTANCE ABUSE.—A substance
 20 abuse testing program shall permit the use of
 21 an onsite or offsite testing.

22 “(B) ALCOHOL.—The alcohol testing com-
 23 ponent of the program shall take the form of al-
 24 cohol breath analysis and shall conform to any
 25 guidelines developed by the Secretary of Trans-

1 portation for alcohol testing of mass transit em-
2 ployees under the Department of Transpor-
3 tation and Related Agencies Appropriations
4 Act, 1992.

5 “(2) DEFINITION.—For purposes of this section
6 the term ‘alcohol and substance abuse testing pro-
7 gram’ means any program under which test proce-
8 dures are used to take an analyze blood, breath,
9 hair, urine, saliva, or other body fluids or materials
10 for the purpose of detecting the presence or absence
11 of alcohol or a drug or its metabolites. In the case
12 of urine testing, the confirmation tests must be per-
13 formed in accordance with the mandatory guidelines
14 for Federal workplace testing programs published by
15 the Secretary of Health and Human Services on
16 April 11, 1988, at section 11979 of title 53, Code
17 of Federal Regulations (including any amendments
18 to such guidelines). Proper laboratory protocols and
19 procedures shall be used to assure accuracy and fair-
20 ness and laboratories must be subject to the require-
21 ments of subpart B of the mandatory guidelines,
22 State certification, the Clinical Laboratory Improve-
23 ments Act of the College of American Pathologists.

24 “(c) TEST REQUIREMENTS.—This section shall not
25 be construed to prohibit an employer from requiring—

1 “(1) an applicant for employment to submit to
2 and pass an alcohol or substance abuse test before
3 employment by the employer; or

4 “(2) an employee, including managerial per-
5 sonnel, to submit to and pass an alcohol or sub-
6 stance abuse test—

7 “(A) on a for-cause basis or where the em-
8 ployer has reasonable suspicion to believe that
9 such employee is using or is under the influence
10 of alcohol or a controlled substance;

11 “(B) where such test is administered as
12 part of a scheduled medical examination;

13 “(C) in the case of an accident or incident,
14 involving the actual or potential loss of human
15 life, bodily injury, or property damage;

16 “(D) during the participation of an em-
17 ployee in an alcohol or substance abuse treat-
18 ment program, and for a reasonable period of
19 time (not to exceed 5 years) after the conclu-
20 sion of such program; or

21 “(E) on a random selection basis in work
22 units, locations, or facilities.

23 “(d) CONSTRUCTION.—Nothing in this section shall
24 be construed to require an employer to establish an alcohol
25 and substance abuse testing program for applicants or em-

1 ployees or make employment decisions based on such test
2 results.

3 “(e) PREEMPTION.—The provisions of this section
4 shall not preempt any provision of State law to the extent
5 that such State law is inconsistent with this section.

6 “(f) INVESTIGATIONS.—The Secretary is authorized
7 to conduct testing of employees (including managerial per-
8 sonnel) of an employer for use of alcohol or controlled sub-
9 stances during any investigations of a work-related fatality
10 or serious injury.”.

11 **SEC. 11. DISCRETIONARY COMPLIANCE ASSISTANCE.**

12 Subsection (a) of section 9 of the Act (29 U.S.C.
13 658(a)) is amended to read as follows:

14 “(a)(1) Nothing in this Act shall be construed as pro-
15 hibiting the Secretary or the authorized representative of
16 the Secretary from providing technical or compliance as-
17 sistance to an employer in correcting a violation discovered
18 during an inspection or investigation under this Act with-
19 out issuing a citation.

20 “(2) Except as provided in paragraph (3), if, upon
21 an inspection or investigation, the Secretary or an author-
22 ized representative of the Secretary believes that an em-
23 ployer has violated a requirement of section 5, of any regu-
24 lation, rule, or order promulgated pursuant to section 6,
25 or of any regulations prescribed pursuant to this Act, the

1 Secretary may with reasonable promptness issue a citation
2 to the employer. Each citation shall be in writing and shall
3 describe with particularity the nature of a violation, in-
4 cluding a reference to the provision of the Act, regulation,
5 rule, or order alleged to have been violated. The citation
6 shall fix a reasonable time for the abatement of the viola-
7 tion.

8 “(3) The Secretary or the authorized representative
9 of the Secretary—

10 “(A) may issue a warning in lieu of a citation
11 with respect to a violation that has no significant re-
12 lationship to employee safety or health; and

13 “(B) may issue a warning in lieu of a citation
14 in cases in which an employer in good faith acts
15 promptly to abate a violation if the violation is not
16 a willful or repeated violation.”.